



October 4, 2000

Ms. Laura E. Enriquez-Guerra
Records Management Specialist
Ysleta Independent School District
9600 Sims Drive
El Paso, Texas 79925-7225

OR2000-3817

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 139758.

The Ysleta Independent School District (the "district") received a request for several categories of information relating to inquiries by the district's Board of Trustees. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the representative samples of responsive information that you submitted.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 protects information that is deemed to be confidential under some source of law outside the Act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common law privacy); Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality).

¹We assume that the district has released to the requestor any responsive information not specifically addressed in your request for this ruling. If not, then the district must release that information at this time. *See* Gov't Code §§ 552.006, .221, .301; Open Records Decision No. 664 (2000).

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither addresses nor authorizes the district to withhold any requested information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

As amended by the Seventy-sixth Legislature, section 552.116 provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. In support of the district's claims under sections 552.101 and 552.116, you state:

The audits in question were prepared in response to requests from board members and these audits have not yet been provided to them for their review. Therefore, it is the District's position that these audits are still considered "rough drafts" or "working papers." The requestor also requested a copy of the status of all on-going investigations. The investigations and final disposition are not yet complete and releasing any information concerning the on-going investigations may jeopardize any work in progress or impede further investigation. It would be in the best interest of the District if it would be allowed to complete the investigation and compile the final findings before it should release any documents to comply with this request. Items #27 and 29 on Exhibit C [sic] are not yet complete and the requestor is asking for a copy of these records. Is the District obligated to release work in progress? Lastly, the audit of travel records (item #33 on Exhibit C) [sic] was not finished as the Internal Auditor left the District before the audit was completed. Therefore, a completed audit is not available.

We have considered your comments and have carefully examined the representative samples of information that you submitted. You have not directed our attention to any source of law outside the Act, and we are unaware of any such law, under which any of the submitted information is deemed to be confidential. Therefore, none of the submitted information is excepted from disclosure under section 552.101. Furthermore, the district is not “the state auditor or the auditor of a state agency or institution of higher education[.]” Gov’t Code § 552.116(a). Thus, you have not demonstrated, and it is not otherwise apparent to this office, that section 552.116 is applicable to any of the submitted information. Therefore, as the district has not demonstrated that any of the information in question is excepted from disclosure under sections 552.101 or 552.116, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

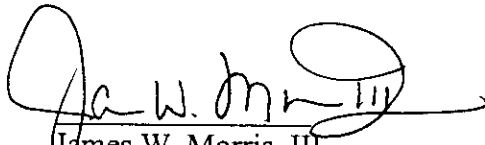
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139758

Encl. Submitted documents

cc: Ms. Kerry Chapman
Assignment Editor
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(w/o enclosures)